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## **OLR Bill Analysis**

### **HB 5310**

#### ***AN ACT CONCERNING CONNECTICUT'S SEED LAW.***

#### **SUMMARY:**

This bill replaces Connecticut's seed law with provisions based on the Association of American Seed Control Officials' Recommended Uniform State Seed Law. Similar to current law, the bill:

1. establishes labeling requirements for seed sold, offered for sale, or transported in Connecticut;
2. imposes certain sales restrictions and record retention requirements;
3. authorizes the agriculture commissioner to enforce the requirements; and
4. establishes penalties for violations.

Among the differences from current law, the bill:

1. applies to flower seeds and tree or shrub seeds, instead of just agricultural and vegetable seeds;
2. distinguishes between cool-season and warm-season grass seed;
3. updates and expands labeling requirements to account for current technology and terminology;
4. specifies that its provisions supersede and preempt any municipal law or ordinance regarding the registration, sale, labeling, storage, transportation, distribution, notification of, or use of seeds;
5. increases the penalty for violating the seed law from a fine to a

class D misdemeanor with a specified fine; and

6. eliminates a requirement that seed sellers or transporters register annually with the agriculture commissioner.

EFFECTIVE DATE: October 1, 2014

## **§ 2 — LABELING REQUIREMENTS**

Under current law, each container of agricultural or vegetable seed sold, offered or exposed for sale, or transported in Connecticut for sowing purposes must have a conspicuous label written or printed in English with specified information. The bill extends this requirement to flower seed and tree or shrub seed containers.

The labels must generally contain information about whether the seed was treated with any substance that is harmful to people or animals; the name, kind, and variety of seed; the lot number; the seed's origin; any weed seeds present; the seed's germination testing; the name of the person who labeled the seed or who is selling the seed; and other specified information.

Current law identifies specific labeling requirements for five seed categories:

1. agricultural and vegetable seeds treated with a substance designed to (a) control or repel disease, insects, or other pests or (b) improve plant development;
2. agricultural seeds, except for grass seed mixtures;
3. grass seed mixtures in containers of 50 pounds or less;
4. vegetable seeds in containers of one pound or less; and
5. vegetable seeds in containers of more than one pound.

The bill instead identifies specific labeling requirements for 14 seed categories:

1. agricultural, vegetable, and flower seeds treated with a

- substance or subjected to a process for which a claim is made;
2. agricultural seeds, except (a) cool-season grass seed, (b) seed sold on a pure live basis, or (c) hybrids with less than 95% hybrid seed;
  3. cool-season grass seed, including Kentucky bluegrass, various fescues, various ryegrasses, and colonial or creeping bentgrass;
  4. agricultural seeds that are coated;
  5. vegetable seeds in packets prepared for use in home gardens or household plantings or in pre-planted containers, mats, tapes, or other planting devices;
  6. vegetable seeds in containers prepared for use in home gardens or household plantings, excluding packets, pre-planted containers, mats, tapes, or other planting devices;
  7. flower seeds in packets prepared for use in home gardens or household plantings or in pre-planted containers, mats, tapes, or other planting devices;
  8. flower seeds in containers, excluding packets, pre-planted containers, mats, tapes, or other planting devices, and not prepared for use in home gardens or household plantings;
  9. agricultural seeds sold on a pure live basis;
  10. agricultural and vegetable hybrid seed containing less than 95% hybrid seed;
  11. combination mulch, seed, and fertilizer products;
  12. combination products containing seed and granular fertilizer;
  13. tree or shrub seeds treated with a substance or subjected to a process for which a claim is made; and
  14. untreated tree or shrub seeds.

### **§ 3 — SALE RESTRICTIONS**

#### ***Sales and Transport Prohibitions***

Under current law, no one may sell, offer or expose for sale, or transport for sale any agricultural or vegetable seed within Connecticut unless a germination test was completed within the preceding nine months, not counting the month in which the test was performed. The bill (1) applies the restriction to flower seed and tree or shrub seed and (2) changes the time period for germination testing to within 10 months including the month in which the test was performed.

Also under current law, no one may sell, offer or expose for sale, or transport for sale any agricultural or vegetable seed within Connecticut unless it is labeled as required, does not have a false or misleading label or advertisement, meets certain purity standards, does not contain prohibited noxious-weed seeds, does not contain restricted noxious-weed seeds beyond certain tolerance levels, and does not contain more than 2½% by weight of all weed seeds. The bill applies these requirements to flower seed and tree or shrub seed.

#### ***Exception to Sales and Transport Prohibitions***

The bill adds an exception to the sale restrictions for certain hermetically sealed seed containers. Specifically, the prohibitions do not apply to any agricultural, vegetable, or tree or shrub seed sold, offered or exposed for sale, or transported for sale in Connecticut in a hermetically sealed container.

But, agricultural or vegetable seeds packaged in a hermetically sealed container may only be sold, offered or exposed for sale, or transported in the state for a 36-month period after the last day of the month in which the seeds were tested for germination before packaging. After the 36-month period, the seed must be retested within 10 months before selling, exposing or offering for sale, or transporting.

#### ***Generally Applicable Prohibitions***

The bill prohibits anyone from:

1. using a relabeling sticker for a seed more than once;
2. using a relabeling sticker that does not have the (a) calendar month and year the germination test was completed, (b) sell-by date, and (c) lot number that matches the existing, original lot number;
3. altering or falsifying any seed label, seed tests, laboratory report, record, or other document to mislead another on the kind, variety, history, quality, or origin on the seed; and
4. using the phrase “contains > than .01%” on a label as a substitute for any required statement.

The law already prohibits anyone from:

1. detaching, altering, defacing, or destroying a seed label;
2. altering or substituting seed in a manner that is inconsistent with the labeling requirements;
3. disseminating any false or misleading advertisement concerning any seed subject to the labeling requirements;
4. hindering or obstructing the agriculture commissioner in the performance of his duties;
5. failing to comply with a “stop sale” order or moving, handling, or disposing of any seed held under a “stop sale” order or disposing of any tag attached to it, except with the commissioner’s express permission;
6. using the word “trace” as a substitute for any required statement; and
7. using the word “type” in any labeling in connection with the name of an agricultural seed variety.

#### **§ 4 — RECORD RETENTION REQUIREMENTS**

The bill extends to people whose names appear on a label as

handling flower seed or tree or shrub seed, certain record retention provisions that already apply to people whose names appear on labels as handling agricultural or vegetable seed. Thus, under the bill, anyone whose name appears on the label as handling the seeds must keep (1) for two years, a complete record of each seed lot handled and (2) for one year, a file sample of each seed lot after the final disposition of the lot. The records and samples must be accessible for inspection by the agriculture commissioner or his agent during business hours.

The bill specifies that these requirements do not apply to any tree seed a consumer produces.

## **§ 5 — EXEMPTIONS**

The bill, as under current law, exempts certain seed and people from the labeling requirements and sales restrictions under certain conditions.

Similar to current law, the bill's provisions do not apply to:

1. seed or grain not intended for sowing purposes;
2. cleaned or conditioned seed in storage within, or in transit or consigned to, a cleaning or conditioning establishment;
3. any carrier transporting or delivering seed in the ordinary course of the carrier's business, if the carrier does not produce, condition, or market seeds; and
4. anyone who sells or offers for sale seed incorrectly labeled as to kind, species, subspecies, variety, type, origin, elevation, or year of collection, if (a) the seeds cannot be properly identified upon examination and (b) he or she obtained an invoice, genuine grower's or tree seed collector's declaration, or other labeling information, and took reasonable precautions to insure the label's veracity.

## **§ 6 — COMMISSIONER'S ENFORCEMENT DUTIES AND POWERS**

### ***Enforcement Duties***

Under current law and the bill, the agriculture commissioner has the duty to enforce Connecticut's seed law. He, or his agent, must:

1. sample, inspect, analyze, and test seeds transported, sold, or offered or exposed for sale in Connecticut as he deems necessary to determine if they comply with the labeling requirements;
2. promptly notify the seller and the labeler or transporter, as applicable, of any violation, "stop sale" order, or seizure; and
3. adopt regulations.

The bill expands the scope of the regulations that the commissioner must adopt. By law, they must include:

1. methods of sampling, inspecting, analyzing, testing, and examining seeds and the tolerances to be used;
2. provisions necessary for enforcement;
3. a prohibited and restricted noxious weed list; and
4. reasonable standards of germination for vegetable seeds.

The bill requires that the regulations also include:

1. reasonable standards of germination for flower seeds;
2. labeling flower seeds with respect to kind and variety or type and performance characteristics for the seeds; and
3. lists of the kinds of (a) flower seeds, (b) tree or shrub seeds, and (c) vegetable seeds subject to the respective germination labeling requirements.

### ***Enforcement Powers***

By law, the commissioner, in carrying out his duties, may:

1. access seeds and related records by entering (a) public or private premises during business hours and (b) a truck or other

conveyor when accessible;

2. issue and enforce a “stop sale” order (see below) to the owner or custodian of any seed lot;
3. establish, maintain, or use seed testing facilities;
4. perform or provide for the performance of purity and germination tests for farmers and dealers on request;
5. adopt regulations on these purity and germination tests, including a fee to be charged for testing; and
6. cooperate with the U.S. Department of Agriculture or any other federal or state agency involved in seed law enforcement.

## **§ 7 — STOP SALE ORDERS**

Under the bill, as under current law, a stop sale order the commissioner issues must prohibit the sale, conditioning, and movement of seed, except on his approval, until the commissioner finds the law’s requirements are met and he issues a release from the stop sale order. Anyone aggrieved by a commissioner’s order may appeal to Superior Court.

## **§ 8 — SEIZURES AND INJUNCTIONS**

### ***Seizures***

Under the bill, as under current law, the commissioner may, upon complaint to the Superior Court, seize any seed lot that does not meet the bill’s requirements. If, after an opportunity for a hearing, the court finds the seed does not comply with the bill and orders the condemnation of the seed, the seed must be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with law.

### ***Injunctions***

Under the bill, as under current law, if the commissioner applies to Superior Court for, and is granted, a temporary or permanent injunction restraining someone from violating or continuing to violate the seed law, the injunction must be issued without bond.

## **§§ 9 & 10 — PENALTY**

The bill increases the penalty for violating the seed law from a fine to a class D misdemeanor with a mandatory fine.

Under current law, anyone who violates the seed law is fined up to \$100 for a first offense and up to \$250 for each subsequent offense. The fine can be mailed in to the Central Infractions Bureau without a court appearance.

The bill instead makes a violation of the seed law a class D misdemeanor, subject to a \$100 fine for the first offense and \$200 fine for each subsequent offense. In addition to the fine, a person may receive up to 30 days in prison. Fines can no longer be mailed in, thus, a court appearance is required.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Change of Reference

Yea 27 Nay 0 (03/07/2014)

Judiciary Committee

Joint Favorable

Yea 30 Nay 3 (04/01/2014)